

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ANTHONY LEO,

Petitioner,

v.

COMMONWEALTH OF  
MASSACHUSETTS,

Respondent.

Civil Action No. 04-11006-JLT

FILED  
U.S. DISTRICT COURT  
OFFICE  
2004 SEP 27 P 3:48  
DISTRICT OF MASS

**RESPONDENT'S OPPOSITION TO PETITIONER'S  
FILING OF SEPTEMBER 21, 2004**

The Commonwealth of Massachusetts, through its undersigned counsel, respectfully submits this opposition to the filing submitted to this Court by the petitioner, Anthony Leo, on September 21, 2004. In his September 21st filing, the petitioner asserts that because the Massachusetts Supreme Judicial Court ("the SJC") has ruled on his petition for a reduction in bail, his claims are now exhausted. The petitioner's reasoning is flawed, however, because even if his excessive bail claim is seen as being exhausted, his claims under the Sixth and Fourteenth Amendments (ineffective assistance of counsel and due process violations) are premature and may not be addressed by this Court until they have been presented to the state's highest court.<sup>1</sup>

*See* Respondent's Memorandum of Law in Support of Motion to Dismiss Petition for Writ of Habeas Corpus, filed July 20, 2004, pp. 7-8; *see also Rose v. Lundy*, 455 U.S. 509, 510 (1982);

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<sup>1</sup> This argument is presented in greater detail in the Respondent's Motion to Dismiss Petition for Writ of Habeas Corpus, which was filed on July 20, 2004, and which is currently pending before this Court.

*Braden v. 30th Judicial Circuit of Kentucky*, 410 U.S. 484, 49-93 (1973). Because the petitioner has not provided the SJC with the first opportunity to pass on the merits of his Sixth and Fourteenth Amendment claims, the petition should be dismissed. 28 U.S.C. § 2254(b)-(c); *Rose*, 455 U.S. at 510.

Respectfully submitted,

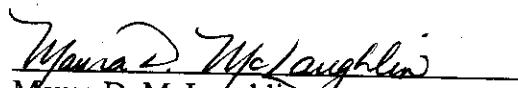
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Dated: September 24, 2004

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the above document was served upon the petitioner, Anthony M. Leo, on September 24, 2004, by depositing the copy in the office depository for collection and delivery by first-class mail, postage pre-paid, as follows: Anthony M. Leo, Old Colony Correctional Center, One Administration Road, Bridgewater, Massachusetts, 02324.

  
Maura D. McLaughlin